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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 130826763-3763-01]

RIN 0694 –AF95

Addition and Revision to the List of Validated End-Users in the People’s Republic of China

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to add an end-user in the People’s Republic of China (PRC) to the list of Validated End-Users (VEUs). Specifically, BIS amends Supplement No. 7 to part 748 of the EAR to add Intel Semiconductor (Dalian) Ltd. (Intel Dalian) as a VEU. With this rule, exports, reexports and transfers (in-country) of certain items to two Intel Dalian eligible destinations are now authorized under Authorization VEU. BIS also amends Supplement No. 7 to part 748 to change the name of an existing VEU in the PRC, from Lam Research Corporation to Lam Research Service Co., Ltd.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230; by telephone: (202) 482-5991, fax: (202) 482-3991, or e-mail: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

Validated End-Users (VEUs) are designated entities located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the dates they were so designated, and their respective eligible destinations and items are identified in Supplement No. 7 to part 748 of the Export Administration Regulations (EAR). Under the terms described in that supplement, VEUs may obtain eligible items without an export license from the Bureau of Industry and Security (BIS), in conformity with Section 748.15 of the EAR. Eligible items vary between VEUs, but may include commodities, software, and technology, except those controlled for missile technology or crime control reasons on the Commerce Control List (CCL) (part 774 of the EAR).

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, and Commerce, and other agencies, as appropriate, is responsible for

administering the VEU program. BIS amended the Export Administration Regulations (EAR) in a final rule published on June 19, 2007 (72 FR 33646) to create Authorization VEU.

Addition to the List of Validated End-User Authorizations in the People’s Republic of China (PRC)

Addition of Intel Semiconductor (Dalian) Ltd. to the list of Validated End-Users in the PRC and its “Eligible Destinations” and “Eligible Items (By ECCN)”

This final rule amends Supplement No. 7 to part 748 of the EAR to add Intel Dalian as a VEU, and to identify its eligible destinations and the items that may be exported, reexported or transferred (in-country) to Intel Dalian under Authorization VEU, effective the date of this rule. The names and addresses of this newly-appointed VEU and its eligible destinations are as follows:

Validated End-User:

Intel Semiconductor (Dalian) Ltd.

Eligible Destinations:

*Intel Semiconductor (Dalian) Ltd.
No. 109 Huai He Road East
Dalian Economic and Technology Development Area
Dalian, Liao Ning Province, 116600
China*

*Intel Semiconductor (Dalian) Ltd.
c/o Dalian Kintetsu Logistics Co., Ltd
Dayaowan Bonded Port No. 6 Road W4 Unit A1
Dalian Economic and Technology Development Area
Dalian, Liao Ning Province, 116601
China*

Eligible Items (by ECCN) that may be exported, reexported or transferred (in-country) to the eligible destination identified under Intel Semiconductor (Dalian) Ltd.'s Validated End-User Authorization:

For Intel Semiconductor (Dalian) Ltd., Export Control Classification Numbers (ECCNs) 1A004, 1C006.d, 2A226, 2A292, 2B006.b, 2B230, 2B231, 2B350, 3A233.a, 3B001 (except for multilayer masks with a phase shift layer designed to produce “space qualified” semiconductor devices), 3C002, 3E002 (excluding development and production technology specific to digital signal processors and digital array processors and further limited to “technology” based on the international technology roadmap for semiconductors (ITRS)), and 4E001 (limited to technology for computer products or components not exceeding an adjusted peak performance (APP) level of 12.0 weighted teraflops).

For Intel Semiconductor (Dalian) Ltd., c/o Dalian Kintetsu Logistics Co., Ltd., ECCNs 1A004, 1C006.d, 2A226, 2A292, 2B006.b, 2B230, 2B231, 2B350, 3A233.a, 3B001 (except for multilayer masks with a phase shift layer designed to produce “space qualified” semiconductor devices), and 3C002.

Technical Change for Existing VEU in the PRC

Change of Name of VEU Lam Research Corporation in the PRC

This final rule also amends Supplement No. 7 to part 748 of the EAR to change the name of an existing VEU, Lam Research Corporation, to Lam Research Service Co., Ltd.. This name change is made to list the name of the U.S. company's Chinese subsidiary because that is the actual name of the authorized VEU.

Current Validated End-User Name:

Lam Research Corporation

New Name of Validated End-User:

Lam Research Service Co., Ltd.

Authorization VEU eliminates the burden on exporters and reexporters of preparing individual license applications because the export, reexport and transfer (in-country) of the eligible items specified for each VEU may be made under general authorization instead of under individual licenses. With the addition of Intel Dalian as a VEU, exporters and reexporters can supply Intel Dalian much more quickly, thus enhancing the competitiveness of both the VEU and its suppliers of U.S-origin items.

To ensure appropriate facilitation of exports and reexports, on-site reviews of VEU's, including Intel Dalian, may be warranted pursuant to Section 748.15(f)(2) of the EAR and Section 7(iv) of Supplement No. 8 to part 748 of the EAR. If such a review is warranted, BIS will inform the PRC Ministry of Commerce.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended most recently by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS-748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694-0088 are not expected to increase significantly as a result of this rule.

Notwithstanding any other provisions of law, no person is required to respond to, nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds

good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because they are unnecessary. In determining whether to grant VEU designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2).

The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313 (July 6, 2006) (proposed rule), and 72 FR 33646 (June 19, 2007) (final rule)). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy. In publishing this final rule, BIS merely adds to the list of VEUs and the respective eligible items and destinations and implements a technical change, which is to change the name of an existing VEU, all within the established regulatory framework of the Authorization VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the authorizations granted in the rule are consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. In addition, as with license applications, VEU authorization applications contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such applications. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR 748.15(a)(2). Additionally, just as

the interagency reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the nature of the review, and in light of the parallels between the VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments, allowing additional public comment on this amendment to individual VEU authorizations, which was determined according to those criteria, is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the *Federal Register*. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. BIS is simply amending the list of VEU authorizations by adding a new end user, consistent with established objectives and parameters administered and enforced by the responsible designated departmental representatives to the End-User Review Committee. Delaying this action's effectiveness could cause confusion with the new VEU status as determined by those authorized government representatives and stifle the ongoing purpose of the VEU Authorization Program. Accordingly, it is contrary to the public interest to delay this rule's effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not

applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 748 of the EAR (15 CFR parts 730 – 774) is amended as follows:

PART 748 – [AMENDED]

1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

2. Amend Supplement No. 7 to part 748 to:

- a. Remove the name of “Lam Research Corporation” from the Validated End-User column in “China (People’s Republic of)” and add in its place “Lam Research Service Co., Ltd.”; and
- b. Add in alphabetical order the entry “Intel Semiconductor (Dalian) Ltd.” in “China (People’s Republic of)” to read as follows:

SUPPLEMENT NO. 7 TO PART 748 - AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS

Country	Validated End-User	Eligible Items (By ECCN)	Eligible Destination	Federal Register Citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
*	*	*	*	*
	Intel Semiconductor (Dalian) Ltd.	<p><i>These items authorized for the Intel destination identified by one asterisk (*):</i></p> <p>1A004, 1C006.d, 2A226, 2A292, 2B006.b, 2B230, 2B231, 2B350, 3A233.a, 3B001 (except for multilayer masks with a phase shift layer designed to produce “space qualified” semiconductor devices), 3C002, 3E002 (excluding development and production technology specific to digital signal processors and digital array processors and further limited to “technology” based on the international technology roadmap for semiconductors (ITRS)), and 4E001(limited to technology for computer products or components not exceeding an adjusted peak performance (APP) level of 12.0 weighted teraflops).</p>	<p>*Intel Semiconductor (Dalian) Ltd. No. 109 Huai He Road East Dalian Economic and Technology Development Area Dalian, Liao Ning Province, 116600 China</p>	<p>78 FR [INSERT PAGE NUMBER], [INSERT DATE OF PUBLICATION].</p>

Country	Validated End-User	Eligible Items (By ECCN)	Eligible Destination	Federal Register Citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
		<i>These items authorized for the Intel destination identified by two asterisks (**):</i> 1A004, 1C006.d, 2A226, 2A292, 2B006.b, 2B230, 2B231, 2B350, 3A233.a, 3B001 (except for multilayer masks with a phase shift layer designed to produce “space qualified” semiconductor devices), and 3C002.	** Intel Semiconductor (Dalian) Ltd. c/o Dalian Kintetsu Logistics Co., Ltd Dayaowan Bonded Port No. 6 Road W4 Unit A1 Dalian Economic and Technology Development Area Dalian, Liao Ning Province, 116601 China	
*	*	*	*	*

DATED: August 29, 2013

Matthew S. Borman

Deputy Assistant Secretary for

Export Administration

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